



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

JGJr: 07-04

Paper No: ____

JUDSON K. CHAMPLIN
WESTMAN, CHAMPLIN & KELLY
SUITE 1600
900 SECOND AVENUE SOUTH
MINNEAPOLIS MN 55402-3319

COPY MAILED

JUL 16 2004

OFFICE OF PETITIONS

In re Application of

Liu, et al.

Application No. 10/727,677

Filed: 3 December, 2003

Attorney Docket No. R74.12-0001

:
:
:
:
:

DECISION ON PETITION

This is a decision on the petition filed 12 April, 2004, and styled "Petition for Corrected Filing Receipt" requesting Application No. 10/727,677 be accorded a filing date of 4 December, 2003, rather than the presently accorded date of 3 December, 2003, and considered under the provisions of 37 C.F.R. §1.53.¹

The petition is **DISMISSED**.

NOTES:

- (1) Any petition (and fee) for reconsideration of this decision must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.53."

¹ Also considered under the provisions of 37 C.F.R. §1.10.

- (2) Thereafter, there will be no further reconsideration of this matter.

BACKGROUND

The application was received by/deposited with the Office on 5 December, 2003, via US Postal Service (USPS) Express Mail Label No. EV241979035US.

A USPS Tracking report indicates only delivery at the Office on 5 December and does not provide a history as to the date/time of acceptance of the package by the USPS from Petitioner.

Petitioner filed the instant petition on 12 April, 2004, and submits, *inter alia*:

- a Declaration in Support of Corrected Filing Receipt, executed by a person identified only as USPS employee Tim Johnson, contends that the "Date In" on the Express Mail Label was erroneously completed by the USPS as "12 03 03," rather than "12 04 03";
- a copy of what is alleged to be the application transmittal form containing the USPS Express Mail Label No. EV241979035US and signed and dated by Petitioner as "12/4/03";
- a copy of what is alleged to be the receipt card for the application containing the USPS Express Mail Label No. EV241979035US and with Petitioner's initials and dated as "12/4/03"—but date-stamped by the Office as "120303."

ANALYSIS

A review of the application papers reveals that the application in fact was filed and received in the Office on 5 December, 2003, via US Postal Service (USPS) Express Mail Label No. EV241979035US. The copy of the receipt card for the application, submitted on filing in accordance with MPEP §503 and presented by the Petitioner, contains USPS Express Mail Label No. EV241979035US, Petitioner's typed initials and a typed of "12/4/03." However, the Office date stamp on the card is "120303"—i.e., 3 December, 2003.

The declaration in the name of Tim Johnson presented by Petitioner states only that Mr. Johnson is employed by the USPS but gives no detail as to his capacity with USPS, his experience, or how and why he would have first-hand knowledge to make the declaration.

Considered under the provisions of 37 C.F.R. §1.10,² documents supporting Petitioner's contention might include the paper tape receipt from the USPS computer/register or a USPS account statement—possibly even a credit card statement—which might contain the Express Mail label number scanned with an infrared sensor and the USPS bar code into the USPS system at the time of acceptance and correlated to that of the instant application.

CONCLUSION

As of this writing there is insufficient support for Petitioner's contention and the petition under 37 C.F.R. §1.53 is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By mail: (Effective 1 May, 2003)³
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

² The regulations at 37 C.F.R. §1.10 provide:

§ 1.10 Filing of papers and fees by "Express Mail."

(a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

[48 Fed. Reg. 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 Fed. Reg. 4285, Jan. 31, 1983, paras. (a) & (c), 49 Fed. Reg. 552, Jan. 4, 1984, effective Apr. 1, 1984; paras. (a)-(c) revised and paras. (d) - (f) added, 61 Fed. Reg. 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

³ To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

By FAX: (703) 872-9306 (IFW Formal Filings)
ATTN.: Office of Petitions

By hand: Mail Stop: Petition
Customer Service Window
Lobby/Room 1B03
Crystal Plaza Two
220 20th Street S.
Arlington, VA 22202

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions